



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 19, 1995

Mr. Pete T. Duarte
Chief Executive Officer
Thomason Hospital
4815 Alameda Avenue
El Paso, Texas 79905

OR95-1477

Dear Mr. Duarte:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You appear to assert that the requested information is excepted from required public disclosure under sections 552.101, 552.102, 552.103, and 552.111 of the Government Code. A copy of the first page of your letter to this office is enclosed for your reference. Your request was assigned ID# 25625.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request.

On May 26, 1994, we sent you an acknowledgment card that asked you to provide us with copies of the records at issue, and to submit your arguments for withholding the documents. To date we have not received the requested copies or your reply.¹

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Consequently, we find that you have not met your burden under sections 552.301 - .303 of the act and that the information is presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). For your convenience, we have attached a list of the types of information that typically must be withheld from the public due to its confidential nature. If you have any questions regarding this matter, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 25625

Enclosures: First page of April 4, 1994 letter
Confidentiality list

cc: Mr. William A. Elias
1100 Montana Avenue, Suite 102
El Paso, Texas 79902

¹In your April 4, 1994 request letter, you asked this office to "waive" your statutory requirement to provide copies of the records at issue. You argued that because the citizen's open records requests were "unduly burdensome and overbroad," locating and compiling the responsive documents would be too costly and burdensome for the hospital. However, a governmental body is not relieved from complying with the Open Records Act simply because the requestor has asked for a large volume of information. *See* Open Records Decision No. 87 (1975).

(w/o enclosures)